

NTSB Order No. EA-3675

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 9th day of September, 1992

Respondent .

5847

affirmed two emergency orders of the Administrator, one that had indefinitely suspended respondent's private pilot certificate for an alleged violation of section 61.51(d)(1) of the Federal Aviation Regulations (FAR, 14 CFR Part 61) and one that had suspended, also indefinitely, the airworthiness certificate of respondent's Piper Model PA-24-250 aircraft for his alleged violation of FAR section 91.417(c), 14 CFR Part 91.³ On appeal, the respondent raises various challenges to the initial decision, but, for the most part, he fails to explain why his objections should produce a different outcome.⁴ In any event, for the reasons discussed below, we have determined that the appeal, which seeks a declaration that the Administrator's orders were

³FAR sections 61.51(d)(1) and 91.417(c) provide, in relevant part, as follows:

"§61.51 Pilot Logbooks.

* * * * *

(d) Presentation of logbook. (1) A pilot must present his logbook (or other record required by this section) for inspection upon reasonable request by the Administrator, an authorized representative of the National Transportation Safety Board, or any State or local law enforcement officer.

"§91.417 Maintenance records.

* * * * *

(c) The owner or operator shall make all maintenance records required to be kept by this section available for inspection by the Administrator...."

⁴Section 821.48(b) of the Board's rules of practice, which section 821.57(b) makes applicable to an emergency proceeding, provides that:

Each appeal brief shall set forth in detail the objections to the initial decision, and shall state whether such objections are related to alleged errors in the law judge's findings of fact and conclusions or alleged errors in his order. It shall also state the reasons for such objections and the relief requested.

void ab initio, should be denied.

The June 17, 1992 emergency orders of suspension are predicated on respondent's failure to make available or present for inspection either his aircraft logbook or his airman logbook in response to the Administrator's written request to see them. The requests stemmed from the Administrator's belief that respondent, while operating his aircraft on October 11, 1991, may have made an unauthorized entry into the Phoenix Terminal Control Area (TCA). The logbooks were sought to enable the Administrator to determine whether respondent's aircraft was airworthy on October 11 and whether the respondent was on that date in compliance with recent flight experience requirements.

Although the law judge found violations of both regulations, he modified, with the Administrator's concurrence, the order suspending respondent's aircraft's airworthiness certificate to provide for the termination of its suspension on July 22, 1992, since respondent at the hearing complied with the outstanding request that he make certain maintenance records for the aircraft available for inspection, and the records that he provided the Administrator's inspectors at that time satisfied them that the aircraft had in fact been airworthy on October 11, 1991. The law judge did not order the termination of the suspension of respondent's pilot certificate, however, for even though respondent presented his pilot logbook for inspection at the hearing, he blocked out the name and certificate number of his instructor on several entries on the ground that that information

was confidential and protected by an attorney-client privilege.⁵

As a result, the inspectors could not at the hearing determine whether respondent was himself current at the time of the October flight under investigation.

Respondent maintains, among other things, that the Administrator did not have a reasonable basis for requesting that his logbooks be made available for inspection.⁶ While we share the law judge's view that the October flight under investigation did provide adequate justification for the subsequent requests, we do not agree that any justification was necessary.⁷ Respondent points to no precedent for the proposition that some reasonable justification must be given before a logbook

⁵Respondent maintained that because the individual recorded in several entries in his logbook was a client, he did not have to disclose information about him even though the individual was respondent's flight instructor and had been giving him flight instruction on October 11. Moreover, respondent asserted that because he was receiving flight instruction, he could not be considered to have been the pilot-in-command of that flight.

⁶Respondent contends that the law judge should have dismissed the Administrator's orders because at one point in the investigation of the October, 1991 incident the respondent had been advised that the matter was closed. We fail to see the relevance of the Administrator's premature, and subsequently rescinded, advice that the case would be pursued no further, where the respondent has identified no prejudice in his ability to defend himself in connection with the charges that resulted from the reopened investigation.

⁷Respondent also suggests, without explanation, that the law judge should not have upheld the Administrator's orders because a letter of investigation he had received stated that he would not be penalized for not responding to that letter. The suggestion is frivolous. This action resulted from respondent's essentially admitted failure to make logbooks available for inspection, not from his decision not to avail himself of the opportunity to explain why he believed no enforcement proceeding concerning that failure should be initiated.

inspection request need be honored, and the law judge's apparent agreement with the respondent in this connection mistakenly relies on cases involving re-examination requests, not inspection requests. See, e.g., Administrator v. Wang, NTSB Order EA-3264 (1991). In our judgment, so long as the request itself is reasonable, in the sense that compliance presents no undue or inappropriate burden, the Administrator is not obligated to explain or establish why he wants or should be permitted to see the logbooks or other records he is authorized to review under regulations that impose no restrictions related to his motives. See Administrator v. Chaffin, 5 NTSB 1341, 1343 (1986)("[T]he Board agrees with the Administrator's argument that an airman, upon reasonable request, does not have the liberty to decide whether to comply with the inspector's request to see his personal logbook."). There is no showing here that the Administrator's written request for production of the logbooks within 10 days for inspection was unreasonable.

As noted, the suspension of respondent's pilot certificate was left in effect because the inspection of his logbook, with certain entries covered, at the hearing did not resolve the issue as to respondent's currency on the 11th of October, 1991. We have carefully considered respondent's contention that he should not be forced to disclose the masked entries, but have concluded that respondent has not established that those entries can properly be deemed to be within the scope of a valid attorney-client privilege. The placement of the instructor's signature in

respondent's logbook was obviously not the result of the instructor's receipt of legal advice from the respondent; it was an acknowledgement of the provision of flight instruction to him.

Moreover, a flight instructor could not have a legitimate expectation that entries he made in a student's logbook could be protected from public disclosure, as he would certainly be aware that those entries would not only be subject to inspection by the FAA and other authorities (see section 61.51(d), supra, n. 3), but also that they would be relied on by the FAA for purposes of assessing the student's currency as well as his qualification for additional ratings or certificates. In these circumstances, we find no merit in the respondent's apparent view that he should be relieved of his obligation as a certificate holder to present his logbook for inspection without limitation simply because his instructor may have been, or may now be, a client of respondent's in contexts that have not been identified.⁸

ACCORDINGLY, IT IS ORDERED THAT:

1. The respondent's appeal is denied, and
2. The Administrator's emergency orders of suspension and the initial decision are affirmed.

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HART and HAMMERSCHMIDT, Members of the Board, concurred in the above opinion and order.

⁸To the extent respondent may have erroneously assured his client that the entries would be confidential, he may well be faced with difficult choices concerning how to proceed. This possibility, however, raises no issue as to the lawfulness or reasonableness of the inspection request.